

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34

SFX Entertainment Inc., d/b/a ctnow.com  
Meadows Music Centre, and Crews Unlimited of  
Connecticut, Inc.

Employers <sup>1</sup>

and

International Alliance of Theatrical Stage  
Employees, Moving Picture Technicians,  
Artists & Allied Crafts of the United States,  
its Territories and Canada, AFL-CIO, CLC

Petitioner

Case No. 34-RC-1853

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. Crews Unlimited of Connecticut, Inc., herein called Crews, and SFX Entertainment Inc. d/b/a ctnow.com Meadows Music Centre, herein called Meadows, are each engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

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<sup>1</sup> Consistent with the evidence in the record, the name of the Employer identified in the petition as "CTNOW.COM Meadows Music Center" has been corrected as shown.

3. The labor organization involved claims to represent certain employees of the Employers.

4. A question affecting commerce exists concerning the representation of certain employees of Crews and Meadows within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. <sup>2</sup>

5. The Petitioner seeks to represent a unit of all stagehands, including riggers, lighting technicians, audio technicians, loaders, and general laborers, who are jointly employed by Crews and Meadows at the Meadows Music Centre, herein called the Music Centre, in Hartford, Connecticut. Although otherwise in accord as to the scope and composition of the unit, Crews and Meadows contend, contrary to the Petitioner, that Al Lopez should be excluded from the unit as a supervisor within the meaning of Section 2(11) of the Act. Crews and Meadows further contend that they are not joint employers and that the petition should be dismissed as to Meadows. There is no history of collective bargaining regarding the petitioned-for employees.

The Music Centre consists of an open air amphitheater which is primarily used for the performance of approximately 26 to 30 live musical concerts between May and September of each year. It began operations in 1995 under the ownership of the Nederlander organization, which operated it through the Connecticut Performing Arts

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<sup>2</sup> The Petitioner previously filed a petition in Case No. 34-RC-1841 seeking to represent a unit of stagehands employed solely by Crews at the Music Centre. On August 18, 2000, following a hearing at which Crews did not appear, the undersigned issued a Decision and Direction of Election in that matter. On September 14, 2000, the day before the scheduled election, the undersigned approved "without prejudice" the Petitioner's request to withdraw its petition, and no election was held. The petition in the instant matter, which seeks a unit of stagehands jointly employed by Crews and Meadows, was filed on September 19, 2000. Meadows, citing the Agency's *Casehandling Manual (Part Two) Representation Proceedings*, Section 11112.1(a), has filed a Motion to Dismiss the instant petition on the ground that the withdrawal in Case No. 34-RC-1841 should have been with prejudice, thus precluding the filing of a new petition for a six-month period.

It is undisputed that that upon a showing of "good cause", Agency policies and procedures do not require the imposition of six months prejudice upon a petitioner which withdraws a petition subsequent to the issuance of a Decision and Direction of Election. See *NLRB Casehandling Manual (Part Two) Representation Proceedings*, Section 11118 et seq. In view of the fact that the unit sought herein is different from that sought in Case No. 34-RC-1841, (i.e., it encompasses employees employed by two entities acting as a joint employer), and noting further that Crews had failed to cooperate in the prior matter, I find good cause exists for proceeding with the instant petition. In this regard, inasmuch as Crews' non-cooperation included its failure to provide the required names and addresses of eligible voters, and noting that Meadows was not a party in that proceeding, neither Crews nor Meadows has been prejudiced by the processing of the instant petition. Accordingly, Meadows' Motion to Dismiss is hereby denied.

Partners (CPAP). In 1997, CPAP was purchased by SFX Entertainment, Inc., which currently owns the Music Centre. Primary responsibility for Meadows overall operation is vested in General Manager Randy McArthur. Reporting directly to McArthur is Production Manager Chris Zipay. Zipay is primarily responsible for the overall production of each concert.

Crews came into existence at approximately the same time as the Music Centre began operations. Although Crews provides employees to several business entities in the entertainment industry in the State of Connecticut, approximately 90% of Crews' business is providing stagehands to work at the Music Centre. Primary responsibility for the overall operation of Crews is vested in its owner, Rickey Goodrich. Primarily responsible for the overall operation of Crews at the Music Centre is Crews' Crew Chief, Al Lopez. Lopez reports directly to Goodrich, and is the only on-site representative of Crews during performances at the Music Centre.

Meadows employs approximately 400 employees to produce each live music concert at the Music Centre. Each concert additionally requires approximately 35 to 40 stagehands who possess assorted skills and abilities. Since 1995, Meadows has secured all of its stagehands through a written agreement between Crews and CPAP. The current agreement, which is effective from June 1, 1996 to May 30, 2002 (herein called the Agreement), provides that Crews is the "sole contractor" to provide stagehands to "load in, take out, handle, set up, operate, if necessary, and strike artist's . . . equipment, lighting, sound system and props and all other related activities." In actual practice, stagehands provided by Crews may perform one or more of the following functions at the Music Centre: "loaders" are responsible for loading and unloading the trucks that travel with the show that contain equipment needed for the performance; "stagehands" or "deckhands" are responsible for setting up and tearing down the stage and for set changes during the show (including related sound, lighting, and electrical work), as well as operating the cameras used to project the show onto large video screens and assisting with the artist's wardrobe; and "riggers" are responsible for climbing onto a steel grid above the stage and using ropes and chains to raise and lower equipment (e.g., lights and equipment) used during the performance.

With regard to the employment of stagehands, Section 3.1 of the Agreement provides that:

Crews shall be solely responsible for selecting, hiring, paying, directing, disciplining and/or terminating its employees. Crews shall be solely responsible for paying any and all taxes, FICA, workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacation or holidays, pension, profit sharing and other benefits for Crews and its employees, servants and agents.

However, Section 2.1 of the Agreement provides, inter alia, that

. . . if at any time and in its sole discretion, the CPAP determines that the services performed under and pursuant to this Agreement by any of Crews' employees are not to the CPAP's satisfaction, the CPAP will so notify Crews in writing, and Crews shall immediately withdraw such individual from CPAP's premises.

Moreover, Section 10.1 of the Agreement provides that: "[i]n the performance of its services hereunder, Crews agrees to comply with any and all affirmative action, minority, and/or other hiring requirements as are required of the CPAP, including but not limited to, the First Source Employment and Purveyor Agreement attached as Schedule B hereto."<sup>3</sup>

With regard to the supervision of stagehands, Section 4.1 of the Agreement provides that:

Crews will be solely responsible for and will superintend the execution of all work covered by this Agreement, either personally or through a representative. If Crews uses a representative, Crews agrees that the representative shall be competent and qualified, shall give personal attention to the work hereunder at all times, and shall represent Crews with full power to act in all matters relating to this Agreement.

With regard to the nature of the relationship between Crews and Meadows, Section 5.1 of the Agreement provides that:

The parties intend that an independent contractor relationship will be created by this Agreement. Crews is not an employee, servant, agent, partner or joint venture of the CPAP. The CPAP and/or its licensee shall determine the work to be accomplished by Crews, but Crews shall determine the manner, means, equipment, and process by which it

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<sup>3</sup> The copy of the Agreement introduced into the record did not include Schedule B.

accomplishes the work specified by the CPAP or its licensee.

With regard to the payment of services provided by Crews, Section 6.1 of the Agreement provides, inter alia, that “Crews shall invoice the CPAP at the conclusion of services provided from time to time under this Agreement, in accordance with the price and payment terms set forth in Schedule A attached hereto and incorporated as part of the Agreement . . . .” Schedule A provides, inter alia, an hourly rate for five categories of employees (stagehand, loader, electrician, rigger and supervisor), each of which exceeds the actual hourly rate paid to stagehands, and specifies an additional 25 % “administrative fee” for Crews. Schedule A further provides that in return for such rates, “the CPAP will name Crews as an additional insured on the Theatre’s General Liability insurance . . . CPAP may at its option require Crews to carry and maintain, at Crews sole cost, General liability insurance. Should CPAP elect such option the parties agree to renegotiate the rates set forth above.” There is no evidence that Meadows requires Crews to carry its own liability insurance.

With regard to the assignability of the Agreement, Section 12.1 provides that:

The CPAP may assign any or all of its rights and duties under this Agreement at any time and from time to time without the consent of Crews. Crews may not assign any of its rights or duties under this Agreement without prior written consent of the CPAP, which CPAP may withhold in its sole discretion.

As noted above, Meadows’ Production Manager Chris Zipay is responsible for overseeing all aspects of its musical productions, including the regular maintenance and upkeep of Meadows’ equipment, as well as the production of each concert during the season. Prior to the start of each concert season, typically at the end of May, Zipay determines what preparation work needs to be performed by stagehands at the Music Centre, including such things as servicing the lighting equipment, maintenance of the video screens, and set-up of the sound system. Zipay then informs Lopez when and what specific work is to be performed, and Lopez arranges for the appropriate stagehands to perform such work, as discussed in more detail below. Zipay directly oversees such preseason work. When the concert season ends, typically in late September, Zipay determines which equipment needs to be disassembled or “struck

down” for the off season. Once again, Lopez arranges for stagehands to perform such work, and Zipay directly oversees the performance of such work.

During the concert season, a few days prior to each scheduled concert, Zipay faxes Lopez a “Show Info Sheet” which sets forth, inter alia, the number and type of stagehands needed, the time of day each such employee will work, as well as the scheduled time for breakfast, lunch and dinner breaks. Lopez may not change the requirements of the “Show Info Sheet” in any manner. Utilizing a list containing the names and phone numbers of approximately 250 stagehands, Lopez determines who will be called to work.<sup>4</sup> Although Lopez selects employees from the list based upon their skills and seniority, there are approximately 35 employees who regularly work at the Music Centre. If Lopez is unable to assemble a crew as specified by the “Show Info Sheet,” he informs Zipay and asks for the names of other stagehands who might be available for such work. On some occasions Zipay has asked Lopez to assign particular stagehands for a specific concert.

On the day of the concert, Lopez, Zipay and the stage manager for the performer(s) meet prior to the commencement of work. During that meeting, the stage manager informs Lopez where he wants each stagehand to work. During the course of the day, Lopez takes directions from the performer’s stage manager, as well as Zipay, and directs the work of the stagehands pursuant to those directions, ensuring that the stagehands properly perform their assigned tasks. There is no evidence that Lopez, who is paid on a salaried basis, performs any stagehand work either during the pre or post season or during a concert.

The stage manager and Zipay are continually involved in the assignment and oversight of work performed by the stagehands in the course of the day. If the stage manager has a problem with the stagehands, he usually brings it directly to Zipay. The

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<sup>4</sup> Lopez received the list from the previous crew chief. The record does not reflect how this list was originally compiled. Prior to each season, Meadows sponsors a job fair in the lobby of the Music Centre for all positions, including security, ushers, food concessionaires, and stagehands. Each department has its own table, and Lopez, attending as Crews’ representative, sits at a table with a sign stating “Employer Crews Unlimited Stage Crew.” Lopez interviews those individuals who are interested in stagehand positions about their background, and, if appropriate, adds their name to the crew list. However, such new employees will not fill out an employment application until they are actually called to work.

stage manager determines when breaks are scheduled, and Lopez assigns stagehands to specific break times based on the stage manager's schedule. Based upon the stage manager's requirements and Zipay's approval, Lopez releases stagehands from work at different times of the day. In this regard, all stagehands are paid a minimum of either four or eight hours, depending upon when they are released by Lopez. Stagehands may also work overtime, once again depending upon whether the stage manager or Zipay require their presence during or after the concert.

Lopez and Zipay each record the hours worked, and the type of work performed, by the stagehands during the course of the concert day. After the concert, Lopez provides Zipay with an invoice reflecting the number of hours worked by each stagehand in each category, and the hourly rate per employee, which Zipay checks for accuracy and then forwards to the Meadows for payment. Meadows issues a check to Crews for the full amount due, and Crews then issues individual paychecks to each stagehand.

Although Lopez is not aware of any written work rules that govern the stagehands while working at the Music Centre, he has been orally informed by Zipay or previous crew chiefs of certain applicable work rules, including such matters as designated parking and eating areas. Crews does not utilize a formal disciplinary policy or issue verbal or written warnings. However, Lopez has counseled stagehands about such problems as tardiness. If Zipay has a problem with a particular stagehand, he will either speak to Lopez about it or deal directly with the employee and inform Lopez about it later. In this regard, Lopez described an incident during his tenure as crew chief in which he and Zipay discussed an employee who was consistently tardy and irresponsible, and together they decided not to call this employee again for future work.

As noted above, the Agreement permits Meadows at its sole discretion to request in writing that Crews immediately remove any stagehand from its premises. Although there is no evidence that Meadows has formally exercised this provision of the Agreement, it has orally requested the removal of stagehands on several occasions. In this regard, McArthur witnessed two stagehands approach a performer for autographs, which is apparently against Meadows rules. As a result, McArthur instructed the crew

chief “to get rid of” the two stagehands, which was done. On another occasion, Zipay told Lopez to instruct a stagehand to leave at a performer’s request.

Stagehands provide their own hand tools, including a crescent wrench, multi-tool, and flashlight. Riggers provide their own harness for climbing the steel grid. Crews supplies the stagehands with hardhats and a rope. Meadows supplies all other equipment, including forklifts, ladders, lighting, sound and video equipment, saws, and bucket trucks. Although stagehands are not required to wear a uniform, during one concert they were asked by the Meadows to wear a T-shirt stating “The Meadows, Employer Crews Unlimited Stage Crew”. Crews has an office at the Music Centre with a sign on the door stating either “House Crew” or “Local Crew.” Lopez uses that office to perform his work throughout the concert season, as well as during the pre and post season when work is being performed by stagehands.

Stagehands and loaders are paid between \$9.00 and \$11.00 per hour, and riggers are paid \$14.00 per hour. The record does not reflect the pay rate for electricians. According to Crews’ owner, Goodrich, he and Lopez jointly decide what each stagehand will be paid, and in most cases Goodrich agrees with Lopez’ recommendation. Lopez denies any involvement in determining such wage rates, and while acknowledging that he could recommend that a particular stagehand should receive a wage increase, he has never done so. Meadows has no involvement in determining the wage rate for individual stagehands, although as noted above the Agreement with Crews specifies the hourly rate which Meadows will pay for each stagehand category. Meadows does provide free meals to stagehands in the course of the concert day.

In its recent decision in *M.B. Sturgis, Inc.*, 331 NLRB No. 173, slip op. at 4 (September 8, 2000), the Board cited *NLRB v. Browning-Ferris Industries*, 691 F.2d 117, 1123 (3d Cir. 1982) and *Riverdale Nursing Home*, 317 NLRB 881, 882 (1995), and reiterated that to establish that two or more employers are joint employers, “they must share or codetermine matters governing essential terms and conditions of employment”. In this regard, the Board further noted that the employers “must meaningfully affect matters relating to the employment relationship such as hiring, firing, discipline, supervision and direction.” *Id.*



Based upon the foregoing and the record as a whole, I find that Meadows and Crews are joint employers because Meadows exercises a substantial degree of control over the manner and means by which employees in the petitioned-for unit perform their jobs, thereby sharing or co-determining those matters governing the employees' essential terms and conditions of employment. More particularly, I note that although the stagehands are hired and directly supervised by Crews, Meadows is regularly involved in their assignment, direction and supervision before, during and after each concert season. See, e.g., *Quantum Resources Corp.*, 305 NLRB 759 (1991); *Pacific Mutual Door Co.*, 278 NLRB 854, 857-859 (1986); *Manpower, Inc.*, 164 NLRB 287, 288 (1967); see also *Martiki Coal Corp.*, 315 NLRB 476, 477-478 (1994). Such involvement by Meadows includes (1) the scheduling of stagehands for work and breaks, (see *Brookdale Hospital Medical Center*, 313 NLRB 592 (1993); *Quantum Resources*, supra); (2) direct oversight and supervision of stagehands in the course of the workday, (see *Quantum Resources*, supra; *Brookdale Hospital Medical Center*, supra); (3) termination of stagehands for work-related reasons, (see *Pacemaker Driver Service, Inc.*, 269 NLRB 971 (1984)); (4) monitoring and verifying the time worked and the type of work performed by stagehands, (see *NLRB v. Western Temporary Services, Inc.*, 821 F.2d 1258, 1267 (7<sup>th</sup> Cir. 1986), enf. 278 NLRB 469 (1986); *Quantum Resources*, supra); (5) hiring of stagehands when Crews is unable to satisfy a show's requirements, (see *NLRB v. Western Temporary Services, Inc.*, supra); and (6) effectively impacting the terms and conditions of employment of stagehands through its Agreement with Crews, including such matters as hiring, discharge, and wage rates, (see *Quantum Resources*, supra). The fact that the parties' Agreement specifies that Crews is an independent contractor of Meadows is an insufficient basis to defeat a joint employer relationship. *Pacemaker Driver Service, Inc.*, supra.

Based upon the record as a whole, I further find that Crew Chief Al Lopez is a supervisor within the meaning of Section 2(11) of the Act. More particularly, I note that Lopez possesses and regularly exercises the authority to hire, assign, transfer, layoff, discipline, and discharge stagehands. See *Charlotte Amphitheater Corp. d/b/a Blockbuster Pavilion*, 314 NLRB 129, 132-133 (1994); *Custom Bronze Aluminum Corp.*, 197 NLRB 397 (1972). While performing such functions, he is the only Crews

representative at the Music Centre, he does not perform any stagehand work, and he is paid on a salaried basis. Accordingly, I shall exclude Crew Chief Al Lopez from the petitioned-for unit.

Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All stagehands employed by Crews Unlimited of Connecticut, Inc. and SFX Entertainment, Inc., d/b/a ctnow.com Meadows Music Centre, at the Meadows Music Centre in Hartford, Connecticut, including riggers, lighting technicians, audio technicians, loaders and general laborers: but excluding all other employees, the crew chief, and guards, professional employees, and other supervisors as defined in the Act.

### DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently. Eligible to vote are those employees in the unit who have not quit or have been terminated for cause, and who satisfy the voter eligibility formula set forth herein.<sup>5</sup> Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. These eligible employees shall vote whether or not they desire to be represented for collective

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<sup>5</sup> The Petitioner would allow voting by those stagehands who averaged 4 or more hours per week for at least the last two quarters preceding the payroll eligibility date. Meadows and Crews take no position regarding a voter eligibility formula. The Board has taken a flexible approach in devising eligibility formulas suited to the unique conditions in the different entertainment industries, see *DIC Entertainment*, 328 NLRB No. 86 (May 28, 1999), and cases cited therein, even where such industries operate on a seasonal basis. See *Julliard School*, 208 NLRB 153 (1974). Such formulas are devised in order “to permit optimum employee enfranchisement and free choice, without enfranchising individuals with no real continuing interest in the terms and conditions of employment offered by the employer.” *DIC Entertainment*, supra. In light of the record evidence that a core of approximately 35 stagehands worked at the Music Centre during the 2000 concert season, that they tend to work at the Music Centre each concert season, and that their work is calculated on an hourly rather than daily or production basis, I find that eligibility to vote in the election directed herein shall be limited to those employees who averaged four or more hours of work per week during the 2000 concert season.

bargaining purposes by International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists & Allied Crafts of the United States, its Territories and Canada, AFL-CIO, CLC.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the issuance of this Decision and Direction of Election, the Employer shall file with the undersigned an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. No extension of time to file this list shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

#### Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by November 30, 2000.

Dated at Hartford, Connecticut this 16th day of November, 2000.

/s/ Peter B. Hoffman  
Peter B. Hoffman, Regional Director  
Region 34  
National Labor Relations Board

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